

EXHIBIT 3

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 MARVEL CHARACTERS, INC.,) No. 1:21-cv-7955-LAK
4 Plaintiff and) and consolidated cases
5 Counterclaim-Defendant,) 1:21-cv-7957-LAK and
6 vs.) 1:21-cv-7959-LAK
7 LAWRENCE D. LIEBER,)
8 Defendant and)
9 Counterclaimant.)

7 MARVEL CHARACTERS, INC.,)
8 Plaintiff and)
9 Counterclaim-Defendant,)
10 vs.)
11 KEITH A. DETTWILER, in his)
12 capacity as Executor of the)
13 Estate of Donald L. Heck,)
14 Defendant and)
15 Counterclaimant.)

12 MARVEL CHARACTERS, INC.,)
13 Plaintiff and)
14 Counterclaim-Defendant,)
15 vs.)
16 PATRICK S. DITKO, in his)
17 capacity as Administrator of)
18 the Estate of Stephen J.)
19 Ditko,)
20 Defendant and)
21 Counterclaimant.)

22 VIDEOTAPED DEPOSITION OF MARK EVANIER
23 Los Angeles, California
24 Friday, March 3, 2023
25 Volume I

22 Reported by:
23 NADIA NEWHART
24 CSR No. 8714
25

<p style="text-align: right;">Page 2</p> <p>1 UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK</p> <p>2</p> <p>3 MARVEL CHARACTERS, INC.,) Plaintiff and) 4 Counterclaim-Defendant,) vs.) 5 LAWRENCE D. LIEBER,) Defendant and) No. 1:21-cv-7955-LAK 6 Counterclaimant.) and consolidated cases) 1:21-cv-7957-LAK and 7 MARVEL CHARACTERS, INC.,) 1:21-cv-7959-LAK Plaintiff and) 8 Counterclaim-Defendant,) vs.) 9 KEITH A. DETTWILER, in his) capacity as Executor of the) 10 Estate of Donald L. Heck,) Defendant and) 11 Counterclaimant.)) 12 MARVEL CHARACTERS, INC.,) Plaintiff and) 13 Counterclaim-Defendant,) vs.) 14 PATRICK S. DITKO, in his) capacity as Administrator of) 15 the Estate of Stephen J.) Ditko,) 16 Defendant and) Counterclaimant.) 17) 18 19 Videotaped deposition of MARK EVANIER, 20 Volume 1, taken on behalf of Plaintiff and 21 Counterclaim-Defendant, at 1999 Avenue of the Stars, 22 8th Floor, Los Angeles, California, beginning at 23 9:37 a.m. and ending at 3:25 p.m. on Friday, 24 March 3, 2023, before NADIA NEWHART, Certified 25 Shorthand Reporter No. 8714.</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2 WITNESS EXAMINATION</p> <p>3 MARK EVANIER</p> <p>4 Volume I</p> <p>5</p> <p>6 BY MR. PETROCELLI 7</p> <p>7 BY MR. TOBEROFF 202</p> <p>8 BY MR. PETROCELLI 207</p> <p>9</p> <p>10</p> <p>11 EXHIBITS</p> <p>12 NUMBER DESCRIPTION PAGE</p> <p>13 Exhibit 150 Expert Report of Mark Evanier; 7 14 24 pages</p> <p>15</p> <p>16 Exhibit 151 Expert Report of Mark Evanier 7 17 (Supplemented); 26 pages</p> <p>18</p> <p>19 Exhibit 152 Rebuttal Expert Report of Mark 7 20 Evanier; 17 pages</p> <p>21</p> <p>22 Exhibit 153 Deposition transcript of Mark 122 23 Evanier in Kirby matter dated 24 11/9/10; 48 pages</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2 For Marvel, Inc.:</p> <p>3 O'MELVENY & MYERS, LLP</p> <p>4 BY: DANIEL M. PETROCELLI, ESQ.</p> <p>5 BY: BRITTANY FOWLER, ESQ.</p> <p>6 BY: Salvatore J. Cocchiaro, ESQ. (Remote)</p> <p>7 1999 Avenue of the Stars, 8th Floor</p> <p>8 Los Angeles, California 90067</p> <p>9 310-553-6700</p> <p>10 dpetrocelli@omm.com</p> <p>11 bfowler@omm.com</p> <p>12 scocciaro@omm</p> <p>13</p> <p>14 For Patrick S. Ditko, in his capacity as</p> <p>15 Administrator of the Estate of Stephen J. Ditko:</p> <p>16 TOBEROFF & ASSOCIATES, P.C.</p> <p>17 BY: MARC TOBEROFF, ESQ.</p> <p>18 23823 Malibu Road, Suite 50-363</p> <p>19 Malibu, California 90265</p> <p>20 310-246-3333</p> <p>21 info@toberoffandassociates.com</p> <p>22</p> <p>23 Also Present:</p> <p>24 JACOB FLORES, videographer</p> <p>25 ELI BARD, Marvel in-house counsel</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX (Continued):</p> <p>2</p> <p>3 EXHIBITS</p> <p>4 NUMBER DESCRIPTION PAGE</p> <p>5 Exhibit 154 (Withdrawn)</p> <p>6</p> <p>7 Exhibit 155 Deposition transcript Mark 138 8 Evanier in the Wolfman matter 9 dated 10/12/99; 118 pages</p> <p>10</p> <p>11 Exhibit 156 The Comic Journal; 140 12 2021MARVEL-00550044; 41 pages</p> <p>13</p> <p>14 Exhibit 157 Expert Report of Paul 186 15 Levitz; 46 pages</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 Los Angeles, California, Friday, March 3, 2023 2 9:37 a.m. 3 4 THE VIDEOGRAPHER: This is Jacob Flores, the 5 videographer. I represent Veritext Legal Solutions 6 in Costa Mesa, California. I'm a California notary 7 public, number 2365264. I am not financially 8 interested in this action, nor am I a relative or 9 employee of any attorney or any party. 10 Today's date is March 3rd, 2023. The current 11 time on the monitor is 9:37 a.m. We're on record. 12 This deposition is taking place at 1999 Avenue of 13 the Stars, number 800, Los Angeles, California 14 90065. This is the video deposition of Mark Evanier 15 in the lead matter Marvel Characters, Inc., et al., 16 versus Lawrence Lieber, et al., lead case 17 number 1:21-cv-7955-LAK. 18 Would counsel please introduce themselves for 19 the record. 20 MR. PETROCELLI: Daniel Petrocelli for 21 Marvel. 22 MS. FOWLER: Brittany Fowler for Marvel 23 Characters, Inc. 24 MR. TOBEROFF: Marc Toberoff for the 25 defendants.</p>	<p style="text-align: right;">Page 8</p> <p>1 were marked for identification 2 and are attached hereto.) 3 BY MR. PETROCELLI: 4 Q Okay. And you've prepared three reports 5 which I've marked as Exhibit 150, which is your 6 initial report; 151, a supplemental report; and 152, 7 a rebuttal report; is that correct? 8 A That seems to be the case, yes. 9 Q Okay. Did you prepare the reports yourself? 10 A Yes, I did. 11 Q Did anybody else participate in the drafting 12 or revising or editing of the reports? 13 A I got advice on how to prepare a report from 14 Mr. Toberoff, but I wrote the report. 15 Q And once you wrote your first draft or any 16 draft for that matter, did anybody, such as 17 Mr. Toberoff or others, review the reports and make 18 any comments? 19 A I don't think so. 20 Q Suggest any revisions? 21 A Yeah. I -- I think I've caught spelling -- 22 they caught spelling mistakes or I got the wrong 23 number on a -- like -- what -- what are they called? 24 Bates numbers? 25 Q Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 THE VIDEOGRAPHER: Thank you. 2 Will our court reporter please swear in our 3 witness. 4 THE REPORTER: Please raise your right hand. 5 6 MARK EVANIER, 7 having been first duly sworn, was examined and 8 testified as follows: 9 10 EXAMINATION 11 BY MR. PETROCELLI: 12 Q Good morning, Mr. Evanier. 13 A Hello. 14 Q I'd like to first wish you a belated happy 15 birthday. 16 A Oh, you've been doing research. 17 Q The last deposition I took in this case was 18 Larry Lieber's, and it was also the day after his -- 19 after his birthday. 20 A You have a trend going here. 21 Q So you know you're here as an expert witness 22 for the -- the defendants in this -- in these 23 litigations? 24 A That's what I understand, yes. 25 (Exhibit 151, Exhibit 152 and Exhibit 153</p>	<p style="text-align: right;">Page 9</p> <p>1 A Okay. I got the Bates number wrong on 2 something. 3 Q And other than -- 4 A I don't know why they're called Bates 5 numbers. 6 Q Nor do I. 7 A All right. 8 Q But were there any, you know, more 9 substantive revisions or suggestions made? 10 A No, I don't think so. 11 Q I'm not going to go through the reports 12 right -- right this moment. 13 But what do you understand you're here to 14 testify about as an expert? 15 A That's a -- that's the toughest question you 16 can -- 17 I understand that I am here because I have a 18 wealth of knowledge about the history of the comic 19 book industry and with a special emphasis on 20 Marvel Comics in the '60s and '70s and with the 21 procedures for how the comic books were created, how 22 the work was done. 23 I have a history of interviewing almost 24 everyone who worked for Marvel in a -- or -- or 25 contributed to their comics, wrote stories that they</p>

<p style="text-align: right;">Page 10</p> <p>1 published or drew stories that they published, 2 almost everyone who was alive when I was becoming 3 active in the business or at comic conventions. 4 And I've written extensively and done quite a 5 few interviews and -- cases where I've been 6 interviewed and cases where I have interviewed those 7 people. 8 And so I understand that I am here to talk 9 about how the comic books were -- were produced, the 10 circumstances around them, not just Marvel, but also 11 other companies as well. I worked for a lot of 12 other companies as well. And -- 13 Does that answer your question? 14 Q In part. 15 Are you here to express any opinions 16 regarding whether the works at issue by the five 17 contributors involved in this litigation are works 18 made for hire or are not works made for hire? 19 MR. TOBEROFF: Calls for a legal conclusion. 20 THE WITNESS: I don't quite understand the 21 question. 22 BY MR. PETROCELLI: 23 Q You do understand that this case involves 24 whether a number of works by Larry Lieber, 25 Steve Ditko, Don Heck, Don Rico and Gene Colan are</p>	<p style="text-align: right;">Page 12</p> <p>1 THE WITNESS: No, actually, rephrase. I 2 don't understand it the way you put it. 3 BY MR. PETROCELLI: 4 Q What don't you understand about it? 5 A I don't understand if you're asking me if I'm 6 here to -- to do the -- the job of a judge or -- or 7 even an attorney. I'm sorry. I'm not, obviously, 8 either of those things. 9 (Mr. Cocchiaro joined the proceedings remotely.) 10 BY MR. PETROCELLI: 11 Q No. I appreciate your pointing out that 12 decisions in this case would be made by people other 13 than yourself or -- or me or Mr. Toberoff. 14 A Yeah. All right. 15 Q Okay. But I'm asking you, since you have 16 been retained as an expert witness, whether you're 17 rendering an opinion in this litigation that the 18 works that are the subject of this litigation are 19 works made for hire or are not works made for hire. 20 MR. TOBEROFF: Asked and answered, calls for 21 legal conclusions. 22 (Mr. Cocchiaro left the proceedings.) 23 MR. TOBEROFF: He already answered that 24 question. 25 THE WITNESS: Yeah, I -- I feel like I've</p>
<p style="text-align: right;">Page 11</p> <p>1 or are not works made for hire? 2 Do you understand that? 3 A I understand that, yes. 4 Q Okay. And are you here to express an opinion 5 as to whether the works that are the subject of this 6 litigation are works made for hire or are not works 7 made for hire? 8 MR. TOBEROFF: Calls for legal conclusions. 9 THE WITNESS: Well, I'm under the impression 10 that the whole matter -- this whole matter is to 11 determine that by judges or juries or people way 12 above my -- my legal expertise. So I don't think 13 I'm here to make the conclusion the judge is 14 supposed to make. 15 BY MR. PETROCELLI: 16 Q Okay. So you're not here, then, to render an 17 expert opinion that the works at issue here are or 18 are not works made for hire? 19 MR. TOBEROFF: Calls for legal conclusions. 20 THE WITNESS: I believe I'm here to discuss 21 the circumstances and situations under which the 22 work was generated and created. And -- 23 If you can rephrase the question. I -- I 24 don't know that I -- 25 MR. PETROCELLI: You can repeat the question.</p>	<p style="text-align: right;">Page 13</p> <p>1 answered the question to the best of my ability. 2 If -- maybe if you phrased it differently, I 3 could -- 4 BY MR. PETROCELLI: 5 Q No. Respectfully, I'd like you to try to 6 answer that question. 7 MR. TOBEROFF: Okay. Asked and answered, 8 calls for a legal conclusion. 9 You can -- you can answer again, but then 10 that's it. 11 THE WITNESS: I feel that I am here to lend 12 the expertise I have to an understanding of the 13 working situation, how the comics were created, how 14 the people were employed or not employed to do them. 15 You -- you -- you're -- you're aware that I 16 am not an attorney or a judge or anyone whose -- 17 whose opinion matters. 18 I think I've answered your question, sir. 19 BY MR. PETROCELLI: 20 Q So to be clear, then, you're not going to 21 render an opinion in this case that the works that 22 are involved in -- in this litigation are not works 23 made for hire? 24 MR. TOBEROFF: Asked and answered, calls for 25 a legal conclusion.</p>

<p style="text-align: right;">Page 14</p> <p>1 You -- you can answer that.</p> <p>2 THE WITNESS: Give me a second here. Let me</p> <p>3 think about it. I'm trying to understand --</p> <p>4 BY MR. PETROCELLI:</p> <p>5 Q Sir, let me -- let me see if I can be</p> <p>6 helpful, because I'm really not trying to do</p> <p>7 something tricky here. I'm just trying to find out</p> <p>8 whether you're here to render the ultimate question</p> <p>9 and opinion on the ultimate question that you've</p> <p>10 indicated is for the judge or the jury to decide.</p> <p>11 So you've explained that you're here to</p> <p>12 discuss certain information and certain</p> <p>13 circumstances regarding how works were created in</p> <p>14 the comic book industry. I -- I understand that.</p> <p>15 A Then you understand my answer.</p> <p>16 Q Hold on. The issue in this case is whether</p> <p>17 or not, as Marvel contends, all of the works</p> <p>18 involved in this case are works for hire or, as the</p> <p>19 defendants contend, none of the works here are works</p> <p>20 for hire. That's the ultimate issue in these cases.</p> <p>21 And are you here to render an opinion that</p> <p>22 the works are works for hire or an opinion that the</p> <p>23 works are not made for hire? That's all I'm asking.</p> <p>24 MR. TOBEROFF: Asked and -- hold on.</p> <p>25 Asked and answered, calls for multiple legal</p>	<p style="text-align: right;">Page 16</p> <p>1 BY MR. PETROCELLI:</p> <p>2 Q Answer that question.</p> <p>3 A My opinion is that I have heard so many</p> <p>4 different definitions of works for hire over the</p> <p>5 years, from different people, that I don't know</p> <p>6 which one to follow.</p> <p>7 Q So you don't know the answer to that</p> <p>8 question?</p> <p>9 A No. I don't -- my -- my answer -- if you</p> <p>10 would like to give me a definition of work for hire</p> <p>11 that you think stands up to all of this, I could</p> <p>12 tell you how I think my understanding of the</p> <p>13 business relates to that definition.</p> <p>14 But I see things called work for hire that I</p> <p>15 do not believe fit my layman's understanding of work</p> <p>16 for hire.</p> <p>17 Q And is that -- sticking with that, okay, your</p> <p>18 layman's understanding of -- of work for hire, is it</p> <p>19 your opinion that the -- that none of the works</p> <p>20 involved in this litigation fit your layman's view</p> <p>21 of work for hire?</p> <p>22 MR. TOBEROFF: Overbroad, lacks foundation.</p> <p>23 THE WITNESS: Do I have to --</p> <p>24 MR. TOBEROFF: Calls for legal conclusions.</p> <p>25 THE WITNESS: May I answer?</p>
<p style="text-align: right;">Page 15</p> <p>1 conclusions.</p> <p>2 You -- you can answer --</p> <p>3 THE WITNESS: I -- I am --</p> <p>4 MR. TOBEROFF: You can just answer the</p> <p>5 question.</p> <p>6 THE WITNESS: -- not here -- I am not here to</p> <p>7 do multiple legal conclusions.</p> <p>8 BY MR. PETROCELLI:</p> <p>9 Q I didn't ask -- you know, your lawyer is</p> <p>10 entitled to make objections. It's really not your</p> <p>11 job to parrot his objections in your answer.</p> <p>12 This is just a very simple question. If</p> <p>13 you're not here to give an opinion to the Court that</p> <p>14 the works are made for hire or not made for hire,</p> <p>15 then just say so. I'm not hearing --</p> <p>16 MR. TOBEROFF: He already did.</p> <p>17 BY MR. PETROCELLI:</p> <p>18 Q -- that opinion.</p> <p>19 A I -- I think I did.</p> <p>20 MR. TOBEROFF: You can answer again.</p> <p>21 BY MR. PETROCELLI:</p> <p>22 Q So what -- what is your opinion? Are they</p> <p>23 works for hire, or are they not works for hire?</p> <p>24 MR. TOBEROFF: That's -- that's another --</p> <p>25 that's a different question. You asked him what --</p>	<p style="text-align: right;">Page 17</p> <p>1 BY MR. PETROCELLI:</p> <p>2 Q Yes, unless he instructs you not to answer.</p> <p>3 A Okay. All right.</p> <p>4 MR. TOBEROFF: Wait a second. So when I</p> <p>5 object -- I'll make objections. Unless I instruct</p> <p>6 you not to answer, you can always answer.</p> <p>7 THE WITNESS: All right.</p> <p>8 MR. TOBEROFF: Just make sure you're</p> <p>9 answering the question asked.</p> <p>10 THE WITNESS: It is my -- in the -- in the --</p> <p>11 all right. Let me see if I can answer it this way.</p> <p>12 Maybe we can get past this.</p> <p>13 I have heard the term "work for hire" banded</p> <p>14 about for years, ever since about 1978. I never</p> <p>15 heard it before then, in the entire industry.</p> <p>16 And I have heard people tell me definitions,</p> <p>17 including definitions from lawyers and people who</p> <p>18 were in positions of responsibility at the</p> <p>19 companies, that I knew were false definitions.</p> <p>20 I think I have been lied to about that at</p> <p>21 various times. Or maybe "lie" is too strong a word.</p> <p>22 Misled or told definitions by people who I don't</p> <p>23 think had any basis for their position.</p> <p>24 I'm sure you're aware that not everything</p> <p>25 people in this world tell you about legal things is</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 true. I'm not talking about anything in this room.</p> <p>2 I'm talking about when publishers or</p> <p>3 representatives of comic book companies are dealing</p> <p>4 with writers and artists and creative people who</p> <p>5 have not been to law school or maybe are not well</p> <p>6 informed about legal situations, they say a lot of</p> <p>7 the nonsense.</p> <p>8 I had a guy who was a head of a comic book</p> <p>9 company once told me that a private individual could</p> <p>10 never own a copyright. It had to be in the name of</p> <p>11 a corporation. I knew that was not true.</p> <p>12 So I -- I will -- you know, if -- if you're</p> <p>13 asking me do I think things are work for hire, I</p> <p>14 think -- I think "works" in this -- I think it is --</p> <p>15 it is a very open question based on some of the</p> <p>16 definitions of work for hire I've heard.</p> <p>17 I -- and I have seen the relationship between</p> <p>18 the publishers, the -- the management, in this case,</p> <p>19 of comic book companies misrepresented. I've seen</p> <p>20 people being told me that their work is work for</p> <p>21 hire when I thought there was no basis for that.</p> <p>22 But -- and I've seen -- I've seen the work --</p> <p>23 term "work for hire" tossed around very casually,</p> <p>24 applied retroactively to work that was done before</p> <p>25 anybody had heard the term "work for hire" in the</p>	<p style="text-align: right;">Page 20</p> <p>1 THE WITNESS: Okay.</p> <p>2 MR. TOBEROFF: And -- and --</p> <p>3 THE WITNESS: And I'm sorry. I apologize.</p> <p>4 MR. TOBEROFF: And -- and -- no, you don't</p> <p>5 have to apologize. This isn't a popularity contest.</p> <p>6 Just -- I would just try and focus and limit it to</p> <p>7 the question.</p> <p>8 THE WITNESS: Okay. I -- I am going to shut</p> <p>9 up now. Thank you.</p> <p>10 BY MR. PETROCELLI:</p> <p>11 Q So in view of what you have explained, is it</p> <p>12 accurate to say, then, that with respect to the</p> <p>13 works specifically involved in this case, you don't</p> <p>14 know one way or the other whether they are works</p> <p>15 made for hire?</p> <p>16 A No, that is not what I said.</p> <p>17 Q Okay. Well, do you know whether they were</p> <p>18 works made for hire?</p> <p>19 MR. TOBEROFF: Calls for legal conclusions.</p> <p>20 THE WITNESS: I don't -- I don't --</p> <p>21 MR. TOBEROFF: That's not why he's here.</p> <p>22 THE WITNESS: I -- I have --</p> <p>23 BY MR. PETROCELLI:</p> <p>24 Q Can -- can you answer that yes or no?</p> <p>25 A No, I can't answer that yes or no.</p>
<p style="text-align: right;">Page 19</p> <p>1 industry.</p> <p>2 So I -- I -- this is, to me, kind of a -- a</p> <p>3 cesspool to wade into. I don't understand some of</p> <p>4 the -- I think I can't answer your question in the</p> <p>5 general. I might be able to answer in the specific,</p> <p>6 in some cases.</p> <p>7 But I -- I would be fascinated if apart --</p> <p>8 apart from this case, someone could show me an</p> <p>9 absolute definition of work for hire that was</p> <p>10 inarguable and allowed someone to look at it and</p> <p>11 say, well, this is work for hire and this isn't.</p> <p>12 I've seen the definitions shift so much at</p> <p>13 the convenience of whoever was trying to claim</p> <p>14 ownership of something that I don't know what</p> <p>15 standard to apply to these cases, necessarily,</p> <p>16 unless you can give me a definition.</p> <p>17 I'm sorry if I'm not answering your question</p> <p>18 with a yes or no, but I don't understand.</p> <p>19 MR. TOBEROFF: Mark?</p> <p>20 THE WITNESS: Yeah.</p> <p>21 MR. TOBEROFF: I -- I think you -- you don't</p> <p>22 have to -- you keep talking.</p> <p>23 THE WITNESS: Okay.</p> <p>24 MR. TOBEROFF: I think you should try and</p> <p>25 focus on the question. Just answer the question.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q You can't answer the question whether you</p> <p>2 know whether these works are made for hire?</p> <p>3 A I --</p> <p>4 Q I'll follow up, whatever your answer is. I'm</p> <p>5 not going to stop there, but I'm trying to do this</p> <p>6 in an orderly fashion.</p> <p>7 MR. TOBEROFF: Objection; calls for legal</p> <p>8 conclusions from a layperson.</p> <p>9 THE WITNESS: I --</p> <p>10 BY MR. PETROCELLI:</p> <p>11 Q Well, you presented --</p> <p>12 A I am not here to -- I am not here as an</p> <p>13 attorney.</p> <p>14 Q So you're not here --</p> <p>15 A I have not been an attorney. I don't have a</p> <p>16 tie on.</p> <p>17 Q So you're not here to render an opinion</p> <p>18 whether the works are made for hire, correct?</p> <p>19 MR. TOBEROFF: Asked and answered. He</p> <p>20 already said that.</p> <p>21 MR. PETROCELLI: Excuse me. Let me rephrase</p> <p>22 the question.</p> <p>23 Q You're not here, then, as an expert witness,</p> <p>24 to render opinions on whether the works involved in</p> <p>25 these cases are works for hire or are not works for</p>

<p style="text-align: right;">Page 26</p> <p>1 BY MR. PETROCELLI:</p> <p>2 Q Could you take a look at Exhibit 151, just</p> <p>3 to -- just to clarify this. And just take a look at</p> <p>4 the first paragraph of your --</p> <p>5 A Which --</p> <p>6 Q -- supplemented expert --</p> <p>7 A Which one are we -- which on are we talking</p> <p>8 about?</p> <p>9 Q Excuse me. We need to do a really good job</p> <p>10 of not talking over each other, because our reporter</p> <p>11 is going to get very upset with us, okay?</p> <p>12 A I don't want to -- I'm only really here to</p> <p>13 please them. I mean, I would like this to be -- for</p> <p>14 them to be very proud. I would like to think I'm</p> <p>15 going to get an Emmy for this.</p> <p>16 Q Look at Exhibit 151.</p> <p>17 A Exhibit 151. Yes. Okay. Thank you. All</p> <p>18 right.</p> <p>19 Q And look at the first paragraph.</p> <p>20 A All right.</p> <p>21 Q And --</p> <p>22 A That is the period that I believe these</p> <p>23 particular works were created in, '62 to '75.</p> <p>24 Q Okay.</p> <p>25 A You asked me if this is about a period -- the</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. TOBEROFF: Well, for purpose -- for --</p> <p>2 that's correct.</p> <p>3 MR. PETROCELLI: Or maybe he is your client.</p> <p>4 I --</p> <p>5 MR. TOBEROFF: That's correct.</p> <p>6 MR. PETROCELLI: I -- I don't know.</p> <p>7 THE WITNESS: He's not -- he -- he --</p> <p>8 THE VIDEOGRAPHER: It's 10:00 a.m. Off the</p> <p>9 record.</p> <p>10 (Recess.)</p> <p>11 (Mr. Cocchiari rejoined the proceedings.)</p> <p>12 THE VIDEOGRAPHER: The time is 10:06 a.m.</p> <p>13 We're back on record.</p> <p>14 BY MR. PETROCELLI:</p> <p>15 Q I'd like to follow up on something you said</p> <p>16 in one of your prior answers in which you mentioned</p> <p>17 having heard lies and misrepresentations about work</p> <p>18 for hire issues.</p> <p>19 Do you recall that?</p> <p>20 A Yes.</p> <p>21 Q Okay. Did you hear any such lies or</p> <p>22 misrepresentations told to you by creators?</p> <p>23 A I heard bafflement. I heard --</p> <p>24 Q Well, my question was lies and</p> <p>25 misrepresentation.</p>
<p style="text-align: right;">Page 27</p> <p>1 larger period of -- the larger period of when --</p> <p>2 Q I didn't ask that, but that's okay.</p> <p>3 A Okay. Okay.</p> <p>4 Q We're --</p> <p>5 A I understood the question to be about the</p> <p>6 period of where the copyright laws were altered,</p> <p>7 and -- and so -- and I -- and -- and --</p> <p>8 MR. TOBEROFF: Could we -- could we --</p> <p>9 MR. PETROCELLI: That was a prior question.</p> <p>10 THE WITNESS: Okay.</p> <p>11 MR. PETROCELLI: We're --</p> <p>12 MR. TOBEROFF: Dan, could we just take a</p> <p>13 short break?</p> <p>14 MR. PETROCELLI: Yeah.</p> <p>15 MR. TOBEROFF: I think I just --</p> <p>16 THE WITNESS: I'm sorry. I'm getting a</p> <p>17 little -- a little disoriented here.</p> <p>18 MR. TOBEROFF: Before we get into -- I'm not</p> <p>19 trying to cut you in, in the middle of questioning,</p> <p>20 but I'm just trying -- I'd like to take a break.</p> <p>21 MR. PETROCELLI: Okay.</p> <p>22 MR. TOBEROFF: Just to talk to my client</p> <p>23 briefly.</p> <p>24 THE VIDEOGRAPHER: The time is 10:00 a.m.</p> <p>25 MR. PETROCELLI: He's not your client.</p>	<p style="text-align: right;">Page 29</p> <p>1 A Well, a misrepresentation is -- I've heard</p> <p>2 people who were just confused and didn't know what</p> <p>3 they -- when -- when -- they weren't lies because</p> <p>4 the people just simply didn't know.</p> <p>5 Q Okay. My question to you is, in all of your</p> <p>6 experience, with respect to that answer that you</p> <p>7 gave about lies and misrepresentations, did you ever</p> <p>8 believe that a creator was lying to you about work</p> <p>9 for hire?</p> <p>10 A A creator was lying to me about --</p> <p>11 Q Yes.</p> <p>12 MR. TOBEROFF: Vague, lacks foundation.</p> <p>13 THE WITNESS: There are creators who also</p> <p>14 were management, and in that case, yes.</p> <p>15 BY MR. PETROCELLI:</p> <p>16 Q What about creators who were not management?</p> <p>17 Have you ever experienced any such person lying to</p> <p>18 you about --</p> <p>19 A Lying --</p> <p>20 Q -- work for hire?</p> <p>21 A -- or -- if -- if the answer -- the question</p> <p>22 is lying or misrepresentation, I can't think of one</p> <p>23 at the moment. I'm not saying it never happened.</p> <p>24 Q When you were giving that testimony, you --</p> <p>25 you had in mind not creative folks, but management</p>

<p style="text-align: right;">Page 30</p> <p>1 or publishing people?</p> <p>2 A I had in mind people who were in positions</p> <p>3 where they felt it was part of their duty to explain</p> <p>4 contracts or to explain why the company was changing</p> <p>5 the way they did business, representing the company.</p> <p>6 Those people were also, in some cases, also</p> <p>7 creators because, as you probably know, people who</p> <p>8 write and draw comics sometimes wind up editing them</p> <p>9 or publishing them.</p> <p>10 Q Okay. With respect to your reports, you</p> <p>11 referred to various sources of information in your</p> <p>12 reports. And I'm talking about all three of your</p> <p>13 reports --</p> <p>14 A Yes.</p> <p>15 Q -- Exhibits 150, 151 and 152.</p> <p>16 Are all of the sources and bases for the</p> <p>17 three reports identified in the three reports?</p> <p>18 A Probably --</p> <p>19 MR. TOBEROFF: Objection; vague, overbroad.</p> <p>20 BY MR. PETROCELLI:</p> <p>21 Q You can answer.</p> <p>22 A I don't know. Do you want to point to a</p> <p>23 specific one?</p> <p>24 Q I'm trying to -- you did not provide a list</p> <p>25 of your -- what we call reliance materials, which is</p>	<p style="text-align: right;">Page 32</p> <p>1 A Okay.</p> <p>2 Q -- unless he tells you not to.</p> <p>3 A All right.</p> <p>4 MR. TOBEROFF: Wait -- wait a second.</p> <p>5 So I'm --</p> <p>6 (Simultaneous speaking - unreportable.)</p> <p>7 MR. TOBEROFF: As you understand, I object --</p> <p>8 can object as to the form of the question, make</p> <p>9 other objections. But you can answer the question</p> <p>10 unless I instruct you, but I would not state my</p> <p>11 objections. That's for me.</p> <p>12 THE WITNESS: Okay. Thank you. I'm sorry.</p> <p>13 MR. TOBEROFF: That's okay.</p> <p>14 THE WITNESS: Could I have the question</p> <p>15 again.</p> <p>16 MR. PETROCELLI: Please.</p> <p>17 (Record read as follows:</p> <p>18 "Q: Did you rely on any statements</p> <p>19 or information from Mr. Toberoff or</p> <p>20 his -- or other counsel in rendering</p> <p>21 the reports?")</p> <p>22 MR. TOBEROFF: Objection; compound.</p> <p>23 THE WITNESS: All right. Did I rely on any</p> <p>24 statements from Mr. Toberoff? No. I relied -- the</p> <p>25 answer is no.</p>
<p style="text-align: right;">Page 31</p> <p>1 a -- a list of the materials on which you relied in</p> <p>2 rendering your reports. And I'm trying to find out</p> <p>3 whether the materials on which you did rely are,</p> <p>4 nonetheless, all identified in your reports.</p> <p>5 MR. TOBEROFF: Objection; lacks foundation,</p> <p>6 assumes facts, misstates the exhibits.</p> <p>7 BY MR. PETROCELLI:</p> <p>8 Q You can answer.</p> <p>9 A Okay. I don't think I listed every place</p> <p>10 that was a source of knowledge to me about the</p> <p>11 business.</p> <p>12 Q Did you --</p> <p>13 A A lot of those are personal observations and</p> <p>14 personal interviews that were not recorded or</p> <p>15 published.</p> <p>16 Q Did you rely on any statements or information</p> <p>17 from Mr. Toberoff or his -- or other counsel in</p> <p>18 rendering the reports?</p> <p>19 MR. TOBEROFF: Objection; compound.</p> <p>20 THE WITNESS: All right. Compound.</p> <p>21 What's the first part again?</p> <p>22 BY MR. PETROCELLI:</p> <p>23 Q Really, these objections are for the judge.</p> <p>24 A I -- I understand that. I understand that.</p> <p>25 Q You're just supposed to answer my question --</p>	<p style="text-align: right;">Page 33</p> <p>1 BY MR. PETROCELLI:</p> <p>2 Q Did you receive any documents from</p> <p>3 Mr. Toberoff on which you relied in writing the</p> <p>4 reports?</p> <p>5 A Yes, I did.</p> <p>6 Q What documents?</p> <p>7 A He sent me a list -- quite a -- there's a</p> <p>8 list of them. I wish I -- if I had my computer in</p> <p>9 front of me, it would be easier to do -- in front of</p> <p>10 me, it would be easier.</p> <p>11 He gave me declarations from past lawsuits,</p> <p>12 for example, a declaration by Gene Colan, a</p> <p>13 declaration by Don Heck, I believe, and such.</p> <p>14 He gave me some interviews that were done</p> <p>15 with various people. Roy Thomas, interview with</p> <p>16 Roy Thomas -- a couple of interviews with Roy</p> <p>17 Thomas.</p> <p>18 He gave me a -- an Avengers plot that Roy</p> <p>19 Thomas produced -- or I don't where -- I don't know</p> <p>20 who produced it.</p> <p>21 He gave me a -- let me see. It was quite a</p> <p>22 pile of things, some of which I already had, some</p> <p>23 interviews, some interviews in the Alter Ego</p> <p>24 magazine.</p> <p>25 He gave me Paul Levitz's expert report and, I</p>

<p style="text-align: right;">Page 46</p> <p>1 a company called DePatie-Freleng, and Marvel 2 Productions -- Marvel's animation company was kind 3 of formed out of the wreckage of that company. 4 Q What was the name of the company? 5 A The company was called DePatie-Freleng, 6 D-e-P-a-i -- D-e-P-a-t-i-e, hyphen, F-r-e-l-e-n-g. 7 (Mr. Bard joined the proceedings remotely.) 8 BY MR. PETROCELLI: 9 Q Have you testified in any other proceedings 10 than the ones that you have identified, either as an 11 expert witness or a fact witness? 12 A Are you counting depositions? 13 Q Yes. 14 A I testified -- I gave a deposition in a 15 lease -- lawsuit around 1976 or '77 for the 16 Edgar Rice Burroughs estate. It was a lawsuit where 17 they had fired or dismissed the president of the 18 company, and he was suing them for wrongful 19 termination. 20 Q Okay. All right. Any others? 21 A I'm going to answer I don't think so. 22 Q Now, you indicated that insofar as the 23 Siegel, Wolfman, Kirby, in this case, all those four 24 cases, that you are uncomfortable or were 25 uncomfortable seeking compensation.</p>	<p style="text-align: right;">Page 48</p> <p>1 that, and then I'll let you continue your answer. 2 A Sure. 3 Q Did you believe -- is one of the reasons 4 you're not seeking compensation in this case because 5 you believe Larry Lieber was wronged? 6 MR. TOBEROFF: Objection as to form, lacks 7 foundation. 8 THE WITNESS: I would say yes. 9 BY MR. PETROCELLI: 10 Q Same question for Steve Ditko. 11 A Probably. 12 Q Don Heck? 13 A Yes. 14 Q Don Rico? 15 A Probably, yes. 16 Q And Gene Colan? 17 A Yes. 18 Q And in what way do you believe that those 19 five folks were wronged? 20 A I believe those five folks contributed to -- 21 mightily, essentially, to the creation of properties 22 that are worth billions of dollars now and that the 23 compensation that they received was a shame. 24 It was -- it was -- it makes me uncomfortable 25 that someone could lend themselves to something, in</p>
<p style="text-align: right;">Page 47</p> <p>1 Why is that? 2 A Well, all of those cases involve creators who 3 I either knew or had great respect for and who, in 4 some cases, I felt had been wronged and -- 5 Are you looking for a short answer for this 6 or -- or -- 7 Q Well, I -- 8 A -- or a long one or -- 9 Q I don't want you to go on needlessly long 10 because we have, you know, a certain amount of time 11 today -- 12 A That's why I'm asking. 13 Q -- but I would like you to try to be 14 responsive, within reason -- 15 A Okay. 16 Q -- in terms of length of your answer. 17 A Okay. I'll do my best. 18 MR. PETROCELLI: Where -- where did he leave 19 off? Can you read what he said so far? 20 So you can pick it up from there. 21 (Record read.) 22 THE WITNESS: I guess asking that means we're 23 not going to get a short answer. All right. 24 BY MR. PETROCELLI: 25 Q So let me just, okay, follow up briefly on</p>	<p style="text-align: right;">Page 49</p> <p>1 the circumstances under which that work was created, 2 where it was not anticipated to be of the value -- 3 or even the head of the company thought the stuff 4 was worthless, and that they ultimately received so 5 little compensation and, in some cases, a great lack 6 of respect. 7 And -- let me -- since you wanted me to 8 answer this question, I will. 9 I grew up on these comic books. They have a 10 lot to do with me being a professional writer for 11 the last 52 years, and I have a -- a certain debt to 12 them, and I feel also a certain debt to history. 13 I think that I have been fortunate enough to 14 meet most of these people, to talk with them, to 15 have access, sometimes, to information that -- that 16 satisfied -- satiated a curiosity I had about it, 17 and I feel that I have a duty to share the record 18 and set things straight sometimes when people get it 19 wrong. 20 There's a spectacular amount of 21 disinformation on the Internet, as I'm sure you 22 know. And I've spent a lot of time doing panels 23 and -- and writing articles and things trying to 24 correct the record. And -- yeah, so that's my 25 answer to you.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q Would you agree that you are an advocate for</p> <p>2 the rights of comic creators?</p> <p>3 MR. TOBEROFF: Objection; vague.</p> <p>4 THE WITNESS: I think I'm an advocate for</p> <p>5 truth here. I know that sounds corny, but, yeah,</p> <p>6 I -- for -- yes, I have -- I have felt that these</p> <p>7 people --</p> <p>8 BY MR. PETROCELLI:</p> <p>9 Q You can answer the question, yes or no.</p> <p>10 A Yeah, the -- the -- I'm -- I'm a little fuzzy</p> <p>11 on your definition of advocate here, but -- but I do</p> <p>12 take their sides at times.</p> <p>13 Q No. My question is, do you consider yourself</p> <p>14 an advocate for comic creators' rights?</p> <p>15 MR. TOBEROFF: Objection as to form, vague.</p> <p>16 THE WITNESS: My answer is yes, at times.</p> <p>17 BY MR. PETROCELLI:</p> <p>18 Q Okay. And do you -- and do you remain an</p> <p>19 advocate today?</p> <p>20 A Nothing has changed.</p> <p>21 Q Okay. Now, in your prior answer, you said,</p> <p>22 "The head of the company thought the stuff was</p> <p>23 worthless."</p> <p>24 A Yes.</p> <p>25 Q Which company?</p>	<p style="text-align: right;">Page 52</p> <p>1 A Charles. I -- I knew him as Charles.</p> <p>2 Q Charles? Okay.</p> <p>3 A I have trouble calling a grown man Chip.</p> <p>4 Q Who -- did anybody tell you that</p> <p>5 Martin Goodman said the contributions of these five</p> <p>6 contributors involved in this case were worthless?</p> <p>7 A Okay. I'm exaggerating with the word</p> <p>8 "worthless." Obviously, they were worth to him, at</p> <p>9 the time, to publish those comics, which he profited</p> <p>10 from.</p> <p>11 It is a virtual unanimous opinion of people</p> <p>12 I've dealt with who worked for Marvel briefly in the</p> <p>13 '60s that Mr. Goodman did not appreciate the value</p> <p>14 of the material, that he thought it was going to --</p> <p>15 you know, the -- the history of Marvel Comics -- and</p> <p>16 I know you aren't interested in certain amounts of</p> <p>17 this, but --</p> <p>18 Q Yeah.</p> <p>19 A -- I have --</p> <p>20 Q We have to keep --</p> <p>21 A -- I have to say it to -- just to -- to</p> <p>22 answer your question, was that they published war</p> <p>23 comics for a while, and then when those went out of</p> <p>24 fad, they published love comics for a while. When</p> <p>25 those went out, they published westerns, and -- they</p>
<p style="text-align: right;">Page 51</p> <p>1 A Well, the company that we now know as</p> <p>2 Marvel Comics.</p> <p>3 Q Okay. And which head?</p> <p>4 A Martin Goodman.</p> <p>5 Q Okay. What -- what stuff?</p> <p>6 A The properties that are controlled now --</p> <p>7 well, the -- the properties that were created in the</p> <p>8 1960s and in the '70s and probably other ones after</p> <p>9 that that are now part of the Marvel universe that</p> <p>10 are exploited in motion pictures and merchandising</p> <p>11 and -- and, you know, many places. The -- the</p> <p>12 characters, obviously, have an enormous value.</p> <p>13 Q Did he personally tell you that?</p> <p>14 A Did Martin Goodman tell me that --</p> <p>15 Q Yeah.</p> <p>16 A -- personally? No.</p> <p>17 Q Okay. In fact, you only met him once in</p> <p>18 passing?</p> <p>19 A I met him briefly.</p> <p>20 MR. TOBEROFF: Object- -- excuse me.</p> <p>21 Objection as to form.</p> <p>22 THE WITNESS: Yes. I met Mr. Goodman once in</p> <p>23 passing. I also knew his son.</p> <p>24 BY MR. PETROCELLI:</p> <p>25 Q Chip Goodman, right?</p>	<p style="text-align: right;">Page 53</p> <p>1 just kept jumping on trends.</p> <p>2 And every single person I think I ever talked</p> <p>3 to who talked about working -- or selling stuff to</p> <p>4 Marvel in the '60s said Martin's always thought it</p> <p>5 was just another fad that would just last for a</p> <p>6 short period of time.</p> <p>7 And when he finally got an offer to sell</p> <p>8 Marvel, he sold it for way, way below what he</p> <p>9 thought it was -- what -- what anybody would</p> <p>10 reasonably now say it was worth.</p> <p>11 Q Did you have direct conversations with any</p> <p>12 of -- Lieber, Ditko, Heck, Rico or Colan on that</p> <p>13 subject?</p> <p>14 A Probably.</p> <p>15 Q And they told you what you just explained to</p> <p>16 me?</p> <p>17 A If you want to go specifically one by one,</p> <p>18 Larry Lieber certainly said that to me.</p> <p>19 Q And said that Mr. Goodman did not appreciate</p> <p>20 his work?</p> <p>21 A Yes.</p> <p>22 Q Okay.</p> <p>23 A Well, no, no, that's not what -- you're --</p> <p>24 you're -- I said he did not value the work</p> <p>25 sufficiently.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q You mean he didn't pay him enough?</p> <p>2 A Well, I think he didn't pay him enough.</p> <p>3 Q Well --</p> <p>4 A I think all these guys -- I think all these</p> <p>5 people were not paid enough.</p> <p>6 Q We're -- we're talking about the payment at</p> <p>7 the time they rendered the -- the service.</p> <p>8 MR. TOBEROFF: Objection as to form.</p> <p>9 BY MR. PETROCELLI:</p> <p>10 Q I'm trying to understand what you're saying.</p> <p>11 A I'm -- I'm --</p> <p>12 Q Let me --</p> <p>13 A All right. All right.</p> <p>14 Q Let me try to set this up --</p> <p>15 A All right.</p> <p>16 Q -- a little bit.</p> <p>17 Are you saying that at the time that they</p> <p>18 rendered the service, created these contributions</p> <p>19 and were paid on a per-page rate?</p> <p>20 A Yes.</p> <p>21 Q Are you saying that that rate was too low at</p> <p>22 that time?</p> <p>23 MR. TOBEROFF: Objection as to form.</p> <p>24 THE WITNESS: Okay. I believe it was.</p> <p>25 BY MR. PETROCELLI:</p>	<p style="text-align: right;">Page 56</p> <p>1 paid less than even the industry norm.</p> <p>2 Q And -- and explain to me what you just said.</p> <p>3 Did you understand that they had agreements</p> <p>4 or contracts requiring such additional compensation?</p> <p>5 MR. TOBEROFF: Objection as to form.</p> <p>6 THE WITNESS: Would you repeat the question?</p> <p>7 BY MR. PETROCELLI:</p> <p>8 Q You just indicated a number of -- of</p> <p>9 instances or ways in which these contributors were</p> <p>10 not paid, okay?</p> <p>11 Did you understand that they were not paid</p> <p>12 even though they had agreements to be so paid?</p> <p>13 MR. TOBEROFF: Objection as to form.</p> <p>14 THE WITNESS: I do not believe they had</p> <p>15 agreements to be paid --</p> <p>16 MR. PETROCELLI: Okay.</p> <p>17 THE WITNESS: -- that way.</p> <p>18 BY MR. PETROCELLI:</p> <p>19 Q But it's your view that even though they</p> <p>20 didn't have specific agreements for such uses, they</p> <p>21 should have been paid anyway?</p> <p>22 A I believe that they should have been paid</p> <p>23 anyway, because the agreements that they signed may</p> <p>24 not have -- let me -- let me say this right. Give</p> <p>25 me a second, please.</p>
<p style="text-align: right;">Page 55</p> <p>1 Q Okay. Are -- you do understand they agreed</p> <p>2 to accept that rate at that time, right?</p> <p>3 MR. TOBEROFF: Objection as to form.</p> <p>4 THE WITNESS: I understand that, yes.</p> <p>5 BY MR. PETROCELLI:</p> <p>6 Q Okay. Besides having a view that their rates</p> <p>7 were too low at that time, do you have some other</p> <p>8 view as to they're being undercompensated?</p> <p>9 MR. TOBEROFF: Objection as to form.</p> <p>10 THE WITNESS: Yes. I --</p> <p>11 BY MR. PETROCELLI:</p> <p>12 Q What -- what is that view?</p> <p>13 A All right. I believe that Marvel reprinted</p> <p>14 that work over and over without paying them</p> <p>15 additional money. I believe in the case of</p> <p>16 Mr. Colan, Mr. Heck, Mr. Lieb- -- well, actually</p> <p>17 probably all of them.</p> <p>18 I'm not sure about Mr. Rico -- well, yes, and</p> <p>19 even Mr. Rico, the work was adapted into television</p> <p>20 scripts and cartoons without compensation or, in</p> <p>21 some cases, credit to them.</p> <p>22 I believe that their artwork -- that the</p> <p>23 artwork of those who drew was reprinted on toys and</p> <p>24 merchandise without them being compensated. I</p> <p>25 believe that the -- and that they were, at the time,</p>	<p style="text-align: right;">Page 57</p> <p>1 I believe that there were verbal promises</p> <p>2 made to some of them that they would be paid, that</p> <p>3 those verbal promises were not honored. And I</p> <p>4 believe that they believed that they were only doing</p> <p>5 comic books.</p> <p>6 And in some cases, I believe they -- they</p> <p>7 were doing it for one-time publication. And then</p> <p>8 regardless of anything that might have been signed,</p> <p>9 which I have never seen anything that gave --</p> <p>10 that -- that said, you know, well, you understand</p> <p>11 we may use these on television? I think they were</p> <p>12 undercompensated.</p> <p>13 Q Did anybody ever -- of these five folks, did</p> <p>14 any one of them tell -- tell you that there had been</p> <p>15 verbal promises made to them to pay them that had</p> <p>16 been broken?</p> <p>17 A Yes.</p> <p>18 Q Who -- who told you that?</p> <p>19 A Steve Ditko.</p> <p>20 Q And what was the promise that he said was</p> <p>21 made that was broken?</p> <p>22 A That if the material had another life outside</p> <p>23 of the comic books, he would be compensated, that</p> <p>24 something would be negotiated.</p> <p>25 Q And when did he tell you that?</p>

15 (Pages 54 - 57)

<p style="text-align: right;">Page 58</p> <p>1 A He told me this in June of 1970.</p> <p>2 Q Okay. And have you written about that</p> <p>3 promise in some of your writings or talks?</p> <p>4 A I'm not sure if I wrote about that.</p> <p>5 Q Why do you -- how do you happen to remember</p> <p>6 that specific date?</p> <p>7 A Well, in July -- in -- in 1970, my</p> <p>8 then-partner and I went to New York, and I visited</p> <p>9 the offices of DC Comics and Marvel Comics and a few</p> <p>10 other companies for a few days. And I -- on that</p> <p>11 trip, I spent two days with -- with Steve Ditko.</p> <p>12 Q And he -- and who did he say made the promise</p> <p>13 to him?</p> <p>14 A Martin Goodman -- well, excuse me,</p> <p>15 Martin Goodman through intermediaries.</p> <p>16 Q Did he say who the intermediaries were?</p> <p>17 A Stan Lee and others.</p> <p>18 Q And did he say what specific promise was</p> <p>19 broken?</p> <p>20 A The specific promise was that if the</p> <p>21 materials had a life outside of being published in</p> <p>22 comic books the way they were being published, that</p> <p>23 Martin would -- I think the term he used was take</p> <p>24 care of him. There would be additional money paid.</p> <p>25 Q So at that time, Mr. Ditko was aware that the</p>	<p style="text-align: right;">Page 60</p> <p>1 And then I spoke with him in person in July of 1970.</p> <p>2 And then we talked on the phone sporadically after</p> <p>3 that, maybe once a year or twice a year. And then I</p> <p>4 talked with him at length at one convention many</p> <p>5 years later. He was -- he was --</p> <p>6 Okay. I've answered my -- that's my answer.</p> <p>7 Q Okay. And can you be more specific as to</p> <p>8 what he said the broken promise was, that he was</p> <p>9 going to provide works to Marvel and then Marvel</p> <p>10 refused to deal with him?</p> <p>11 A He was told me that Marvel -- he was told</p> <p>12 Marvel would always be open to giving him work,</p> <p>13 that -- that when he wanted to do work for -- draw</p> <p>14 comics for them, they would, you know, make it</p> <p>15 possible for him to submit work and to have, you</p> <p>16 know -- and then there was a gap where they -- he</p> <p>17 just wasn't getting it.</p> <p>18 Q Did he tell you why?</p> <p>19 A He did not know why. Well, he -- no, he</p> <p>20 didn't -- he didn't --</p> <p>21 Q Okay.</p> <p>22 A He did not understand why.</p> <p>23 Q So you mentioned conversation --</p> <p>24 A And, actually -- okay. It's not responsive</p> <p>25 to your question. I am sorry.</p>
<p style="text-align: right;">Page 59</p> <p>1 promises had already been broken?</p> <p>2 A He said that was the reason he had stopped</p> <p>3 working -- doing work with Marvel.</p> <p>4 Q Okay. Do you know -- did you ever discuss</p> <p>5 with him why he didn't bring a lawsuit?</p> <p>6 A I don't think there were any comic book</p> <p>7 creators at that time who dared bring a lawsuit or</p> <p>8 could afford to bring a lawsuit.</p> <p>9 Q No. My question was, did he tell you?</p> <p>10 A No, he didn't tell me that.</p> <p>11 Q Okay. Besides Ditko telling you about that</p> <p>12 promise that he claimed was broken, as early as June</p> <p>13 of 1970, are you -- did you have any other</p> <p>14 conversations with either him or -- or Lieber, Heck,</p> <p>15 Rico and Colan about broken promises?</p> <p>16 A Let me think. Not with -- I don't think with</p> <p>17 them. With other people, but not with them. Let me</p> <p>18 think for a second. Not with Larry.</p> <p>19 Don Heck told me that he was promised that</p> <p>20 Marvel would always buy work from -- for him -- from</p> <p>21 him and that -- that, at times, that was not</p> <p>22 honored.</p> <p>23 Q In what year did he tell you that?</p> <p>24 A I spoke with him -- the first time I spoke</p> <p>25 with him was on the phone in late '69 or early 1970.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q You mentioned a conversation with Ditko and</p> <p>2 then with Heck now, not with Lieber, you said.</p> <p>3 By the way, have you read Larry Lieber's</p> <p>4 deposition in this case?</p> <p>5 A Yes.</p> <p>6 Q Okay. And in the Kirby case?</p> <p>7 MR. TOBEROFF: He asked --</p> <p>8 THE WITNESS: Yeah.</p> <p>9 MR. TOBEROFF: -- you if you read</p> <p>10 Larry Lieber's deposition transcript in this case.</p> <p>11 THE WITNESS: Oh, no, I haven't. No.</p> <p>12 BY MR. PETROCELLI:</p> <p>13 Q You said yes.</p> <p>14 A No. I -- I read a statement he made. I -- I</p> <p>15 read a --</p> <p>16 Q What statement?</p> <p>17 A Are we talking about -- I'm a little confused</p> <p>18 here. I'm sorry.</p> <p>19 Q Well, you answered yes to my question, and</p> <p>20 then Mr. Toberoff --</p> <p>21 A I'm not -- I'm not --</p> <p>22 Q -- asked you the same question again, I guess</p> <p>23 suggesting that maybe you didn't read it.</p> <p>24 Did you or did you not read Larry Lieber's</p> <p>25 deposition taken in this case?</p>

<p style="text-align: right;">Page 62</p> <p>1 MR. TOBEROFF: You mean the transcript of his 2 deposition? 3 MR. PETROCELLI: Well, of course I mean that. 4 MR. TOBEROFF: Yes, but to a layman, it's not 5 clear. 6 THE WITNESS: I read a transcript of a 7 deposition of Larry Lieber. 8 BY MR. PETROCELLI: 9 Q Okay. Was it the one that -- 10 A I believe it was. 11 Q In this case? 12 A I -- I -- I'm -- I'm getting a little 13 confused here. I -- I -- 14 Q He also gave a deposition in the Kirby case. 15 A That's why I'm confused, if -- if I'm 16 remembering -- which one I'm remembering. 17 Q Whichever one it was, you read one? 18 A I read a -- a deposition by -- a -- I read a 19 transcript of a -- of a deposition with 20 Larry Lieber. 21 Q And did you read that recently in connection 22 with the preparation of your reports? 23 A I read it a few weeks ago. 24 Q Okay. And was there anything in there that 25 you read that you thought was -- was incorrect that</p>	<p style="text-align: right;">Page 64</p> <p>1 troublemaker. 2 Q This is for publications other than the comic 3 books, you said? 4 A Yes, yes. 5 Q Okay. And then what about Gene Colan? Did 6 you discuss with him broken promises by Marvel? 7 A Well, the promises that Gene Colan felt were 8 broken were broken after the period of time we're 9 talking about here. 10 Q Promises that occurred in later years? 11 A Yes. Well, promises that were made at the 12 time but were broken much later. 13 Q What was the nature of the promise that 14 Gene Colan described to you that was later broken? 15 A Continued able to sell pages to the company. 16 Q And did they stop working with him? 17 A Yes. 18 Q Okay. You said earlier that you believe you 19 have a duty to set the record straight. 20 A Yes, I said that, I believe. 21 Q As one of the reasons why you're not seeking 22 compensation? 23 A True. 24 Q How do you want to set the record straight? 25 A I want to put what I know, what I learned,</p>
<p style="text-align: right;">Page 63</p> <p>1 comes to mind? 2 MR. TOBEROFF: Objection as to form. 3 THE WITNESS: I don't remember. 4 BY MR. PETROCELLI: 5 Q Okay. So did you have any conversations with 6 Don Rico about broken promises? 7 A Yes. 8 Q When did that happen? 9 A I met Don first in around 1974, I'm going to 10 guess, somewhere in there. I knew him until he 11 died. I had so many conversations with him that I 12 can't tell you specifically when each one -- when he 13 said specific things. 14 Q What was the broken promise that he described 15 to you? 16 A Well, he had a very long battle with 17 Martin Goodman's company over some things he had 18 written for the non-comic magazines. And in the 19 case of his work in the comic books then, he 20 believed that he had been promised -- I was going to 21 say work, but he wasn't hired by them. 22 He just was -- was -- they just, you know, 23 read his submissions, and -- and he felt it wasn't 24 given consideration, that they didn't want him 25 around anymore because they thought he was a</p>	<p style="text-align: right;">Page 65</p> <p>1 what I've heard, what I was told into the public 2 record and let -- you know, in some cases, speak for 3 people who are not here to speak for themselves. 4 Q And you've done that a couple times already, 5 right? At least three times, right? Siegel, 6 Wolfman and Kirby. 7 A I wasn't talking about -- when I said that, I 8 wasn't talking specifically about being an expert 9 witness. I'm talking about writing articles, books, 10 correcting people on the Internet. I do a lot of 11 correcting people on the Internet. 12 Q When you said you have a duty to set the 13 record straight and it's for that reason that you're 14 not comfortable seeking compensation for serving as 15 an expert, do you feel that you need to set the 16 record straight as part of your expert work in this 17 case? 18 MR. TOBEROFF: Objection as to form. 19 THE WITNESS: Could I have that again, 20 please. 21 THE REPORTER: Would you like me to read it 22 back? 23 MR. PETROCELLI: Please. 24 (Record read as follows: 25 "Q: When you said you have a duty</p>

<p style="text-align: right;">Page 66</p> <p>1 to set the record straight and it's</p> <p>2 for the reason that you're not</p> <p>3 comfortable seeking compensation --")</p> <p>4 MR. PETROCELLI: "That" reason. "And it's</p> <p>5 for that reason."</p> <p>6 (Record read as follows:</p> <p>7 "Q: -- for that reason that you're</p> <p>8 not comfortable seeking compensation</p> <p>9 for serving as an expert, do you</p> <p>10 feel that you need to set the record</p> <p>11 straight as part of your expert work</p> <p>12 in this case?")</p> <p>13 MR. TOBEROFF: Objection as to form.</p> <p>14 THE WITNESS: All right. I think that</p> <p>15 slightly misstates my testimony. The duty to set</p> <p>16 the record straight was not the whole reason that I</p> <p>17 do not seek compensation.</p> <p>18 Another reason is that I feel a certain -- I</p> <p>19 said I feel a certain debt sometimes to these</p> <p>20 people, and some of them are people that I knew and</p> <p>21 felt were wronged in some way, and -- and, you</p> <p>22 know...</p> <p>23 BY MR. PETROCELLI:</p> <p>24 Q How do you feel that you are repaying that</p> <p>25 debt by serving as an expert in this case?</p>	<p style="text-align: right;">Page 68</p> <p>1 person or not.</p> <p>2 When people have wronged management, even, I</p> <p>3 feel I have a duty to correct the record.</p> <p>4 I don't think that the cause of understanding</p> <p>5 the history of the industry is served by</p> <p>6 dissemination of false information, and if my</p> <p>7 offering of what I know, what I've heard, what I</p> <p>8 believe -- what I have observed in some cases can</p> <p>9 help out, that is reason enough for me to offer it,</p> <p>10 in any venue.</p> <p>11 BY MR. PETROCELLI:</p> <p>12 Q Are you aware of Marvel offering any false</p> <p>13 information or taking false positions in this</p> <p>14 litigation?</p> <p>15 MR. TOBEROFF: Objection as to form.</p> <p>16 THE WITNESS: I don't know -- I don't know</p> <p>17 the answer to that question.</p> <p>18 MR. TOBEROFF: You don't have to keep -- you</p> <p>19 can -- you've answered the question.</p> <p>20 THE WITNESS: I've -- I just answered my</p> <p>21 question. That's my answer.</p> <p>22 MR. TOBEROFF: You don't have to fill the</p> <p>23 silence.</p> <p>24 BY MR. PETROCELLI:</p> <p>25 Q You understand that the -- the heirs of these</p>
<p style="text-align: right;">Page 67</p> <p>1 A Well --</p> <p>2 MR. TOBEROFF: Objection as to form.</p> <p>3 THE WITNESS: -- I feel that I -- I feel that</p> <p>4 I'm -- I feel that I am helping repay a debt to</p> <p>5 them. Sometimes you do things in this world just</p> <p>6 because you think -- you like somebody and you want</p> <p>7 to speak on their behalf if you feel you have the</p> <p>8 truth.</p> <p>9 You know, you -- all of those people I know,</p> <p>10 the -- the people that I've mentioned -- well, no,</p> <p>11 let me take -- let me amend that.</p> <p>12 Some of the people that I've mentioned --</p> <p>13 Let me have the question one more time. I'm</p> <p>14 sorry.</p> <p>15 (Record read as follows:</p> <p>16 "Q: How do you feel that you are</p> <p>17 repaying that debt by serving as an</p> <p>18 expert in this case?")</p> <p>19 MR. TOBEROFF: Objection as to form.</p> <p>20 THE WITNESS: If I know -- if somebody</p> <p>21 publish- -- publishes a statement I believe to be</p> <p>22 untrue, that misrepresents the history of comics and</p> <p>23 does not give proper credit to someone, where I feel</p> <p>24 I have information that would correct the record, I</p> <p>25 feel I have a duty to offer it, whether I knew the</p>	<p style="text-align: right;">Page 69</p> <p>1 five gentlemen are seeking to terminate alleged</p> <p>2 grants of copyrights and to recapture interest in</p> <p>3 those copyrights?</p> <p>4 You understand that that's the subject of</p> <p>5 their termination notices?</p> <p>6 MR. TOBEROFF: Objection as to form.</p> <p>7 THE WITNESS: I understand that.</p> <p>8 BY MR. PETROCELLI:</p> <p>9 Q And do you understand whether or not your</p> <p>10 work as an expert in this case and your reports and</p> <p>11 your testimony will aid the heirs in securing those</p> <p>12 rights?</p> <p>13 MR. TOBEROFF: Objection as to form.</p> <p>14 THE WITNESS: If I am correcting the record,</p> <p>15 yes.</p> <p>16 BY MR. PETROCELLI:</p> <p>17 Q Did you --</p> <p>18 A Let me amend that answer. If I am correcting</p> <p>19 the record, it might.</p> <p>20 Q You helped found the Comic Art Professional</p> <p>21 Society?</p> <p>22 A Correct.</p> <p>23 Q And what was the -- just very generally, what</p> <p>24 was the nature of that organization?</p> <p>25 A It was, basically, the social group for</p>

<p style="text-align: right;">Page 90</p> <p>1 Q Okay. Are you sure of that?</p> <p>2 A I said, "I believe."</p> <p>3 Q And you said you --</p> <p>4 A That -- that would be when I met him in the</p> <p>5 hallways.</p> <p>6 Q You were introduced to him, right?</p> <p>7 A I was introduced to him, yes.</p> <p>8 Q No conversation of substance, right?</p> <p>9 A Nothing that would be germane to this case.</p> <p>10 Q Okay. You didn't call him out for breaching</p> <p>11 Steve Ditko's promise, right?</p> <p>12 MR. TOBEROFF: Objection as to form.</p> <p>13 THE WITNESS: I don't think I had met with</p> <p>14 Mr. Ditko before, at the time.</p> <p>15 BY MR. PETROCELLI:</p> <p>16 Q Okay. And other than visiting the offices,</p> <p>17 you never worked at Marvel's offices, right?</p> <p>18 A Not officially.</p> <p>19 Q Well, you lived in L.A., right?</p> <p>20 A Yes.</p> <p>21 Q Okay. And Marvel's offices were in New York?</p> <p>22 A Yes.</p> <p>23 Q And you were never on staff at Marvel, right?</p> <p>24 A No.</p> <p>25 Q Correct?</p>	<p style="text-align: right;">Page 92</p> <p>1 customs and practices in every industry, but some of</p> <p>2 them are pretty vague and --</p> <p>3 I -- I don't know -- I guess I don't</p> <p>4 understand the question.</p> <p>5 BY MR. PETROCELLI:</p> <p>6 Q What don't you --</p> <p>7 A What -- what customs and practices are we</p> <p>8 talking about?</p> <p>9 Q Well, what customs and practices are you</p> <p>10 talking about in your report?</p> <p>11 A In the -- in the customs and practices I'm</p> <p>12 talking about in the report, I'm talking --</p> <p>13 MR. TOBEROFF: Wait a second.</p> <p>14 I -- I would like to object to the form of</p> <p>15 the question, overbroad.</p> <p>16 You -- you --</p> <p>17 THE WITNESS: I can answer? Okay.</p> <p>18 MR. TOBEROFF: Dan, do you want to restate</p> <p>19 your original question?</p> <p>20 MR. PETROCELLI: Yeah.</p> <p>21 BY MR. PETROCELLI:</p> <p>22 Q What -- what -- is it your opinion that there</p> <p>23 are customs -- that there -- there was a custom and</p> <p>24 practice in the comic book industry for dealing with</p> <p>25 talent?</p>
<p style="text-align: right;">Page 91</p> <p>1 A I was never hired on staff at Marvel. I did</p> <p>2 some work up there in the offices, but I just</p> <p>3 never -- it's -- I -- no, I was never on staff</p> <p>4 there, no.</p> <p>5 Q Would you characterize your experience with</p> <p>6 comic books, especially prior to 1978, being more on</p> <p>7 the creative than business side?</p> <p>8 MR. TOBEROFF: Objection as to form.</p> <p>9 THE WITNESS: My involvement was creative.</p> <p>10 BY MR. PETROCELLI:</p> <p>11 Q Now, in your report, you offer opinions about</p> <p>12 the custom and practice in the comics industry,</p> <p>13 right?</p> <p>14 A Correct.</p> <p>15 Q So you agree that there were customs and</p> <p>16 practices in the comic book industry with -- with</p> <p>17 respect to the creation and publication of comics?</p> <p>18 MR. TOBEROFF: Objection as to form.</p> <p>19 THE WITNESS: Some, not -- not to the extent</p> <p>20 that Mr. Levitz indicated in his report.</p> <p>21 BY MR. PETROCELLI:</p> <p>22 Q Have you ever testified that there were no</p> <p>23 customs and practices in the comic books industry?</p> <p>24 MR. TOBEROFF: Objection as to form.</p> <p>25 THE WITNESS: Well, there is -- there are</p>	<p style="text-align: right;">Page 93</p> <p>1 A I do not believe there was a universal custom</p> <p>2 and practice for dealing with talent.</p> <p>3 Q Okay. You -- and that's still your opinion</p> <p>4 today, right?</p> <p>5 A Yes.</p> <p>6 Q Okay. And was there a custom and practice</p> <p>7 with -- with respect to some other aspect of the</p> <p>8 comic book industry?</p> <p>9 MR. TOBEROFF: Objection as to form,</p> <p>10 overbroad.</p> <p>11 THE WITNESS: Well, you know, they all</p> <p>12 printed on cheap newsprint. That would be a -- a</p> <p>13 custom. They all used ink. That would be a custom.</p> <p>14 They all paid as little as they could get away with</p> <p>15 paying. That would be a custom.</p> <p>16 I have objected in many articles, to the</p> <p>17 notion that they're all written the same way,</p> <p>18 they're all drawn the same way. I did a seminar</p> <p>19 once, at a convention, about showing different ways</p> <p>20 comic books can be -- have been and can be written.</p> <p>21 BY MR. PETROCELLI:</p> <p>22 Q Is it your opinion that there was, during</p> <p>23 these years, '62 to '75, a custom and practice in</p> <p>24 the comic book industry with respect to the creation</p> <p>25 of comic books?</p>

<p style="text-align: right;">Page 106</p> <p>1 THE WITNESS: I believe the ultimate 2 responsibility was Stan Lee, but he delegated some 3 of it to Roy Thomas or Sol Brodsky or other people 4 there. 5 BY MR. PETROCELLI: 6 Q Have you read Roy Thomas's deposition in this 7 case? 8 A Yes, I believe I have. Yes, yes. 9 Q Relatively recently? 10 A Yes. Yes. 11 Q Is there anything that comes to mind that you 12 read in that transcript of Thomas's deposition that 13 you thought was wrong? 14 A Yes, but I can't recall at this moment what 15 it was. 16 MR. TOBEROFF: Dan? We -- we have not -- we 17 have not yet received that transcript, so that's 18 an -- 19 THE WITNESS: Oh, okay. 20 MR. TOBEROFF: -- that's an -- I'm just -- 21 THE WITNESS: I -- I read -- 22 MR. TOBEROFF: I'll represent -- 23 THE WITNESS: I read articles -- 24 MR. TOBEROFF: I'll represent that -- that 25 that's --</p>	<p style="text-align: right;">Page 108</p> <p>1 Q Okay. Now, from time to time, in your 2 answers, you use the word "purchase" in -- in 3 respect of the transaction, right, between the 4 artist and Marvel; is that right? 5 A I believe I do, yes. 6 Q Is there some significance in your mind to 7 the use of the word "purchase" or "sell"? 8 MR. TOBEROFF: Objection as to form. 9 BY MR. PETROCELLI: 10 Q In terms of your expert opinion and 11 testimony you're giving in this case, is there 12 some particular significance to the use of 13 "purchase" and "sell" in your testimony? 14 MR. TOBEROFF: Objection as to form. 15 THE WITNESS: Yes. 16 BY MR. PETROCELLI: 17 Q What is it? 18 A Because I believe that there has been an 19 attempt to portray people who were selling 20 piecework, freelancers who were selling piecework, 21 to portray them as staff people. 22 Q What does "staff people" mean? 23 A People who are hired to come in and paid 24 by the week and are working in the office. 25 Q Is it your understanding that Marvel is</p>
<p style="text-align: right;">Page 107</p> <p>1 BY MR. PETROCELLI: 2 Q Well, you imagined it? 3 A No, no, no. 4 Q You imagined the transcript and the error, 5 right? 6 A I was -- I was given -- 7 MR. TOBEROFF: I think he's conflating the 8 interviews and -- 9 THE WITNESS: Yeah. 10 MR. TOBEROFF: -- things with -- 11 THE WITNESS: No. I read interviews with 12 Mr. Thomas. 13 BY MR. PETROCELLI: 14 Q Okay. Okay. 15 A May -- May I add something here? I have 16 never read an interview with Roy Thomas I didn't 17 disagree with something in, so... 18 Q But you didn't read his deposition? 19 A No, no, not this one, no. No, not this. 20 Q And for that matter, you didn't read 21 Larry Lieber's deposition in this case, either, 22 right? 23 A I -- I guess -- 24 Q Apparently, you don't have -- 25 A I -- I guess I read his other deposition.</p>	<p style="text-align: right;">Page 109</p> <p>1 claiming that these five contributors in this case 2 were staff employees? 3 MR. TOBEROFF: Objection as to form. 4 THE WITNESS: I'm not saying that they are 5 saying it in this particular case, but they have 6 frequently -- when I was a kid, reading Marvel 7 comics and the Bullpen page, I came to the 8 conclusion, as any reasonable person would, that all 9 of these people who wrote under the comics were 10 sitting in the office all day writing and drawing 11 the stuff in what they call the bullpen. 12 And when I talk about -- you know, I 13 mentioned earlier that I frequently correct errors 14 on the Internet about this, this is one of the 15 errors I often correct. 16 BY MR. PETROCELLI: 17 Q Well, if you would assume, for purpose of my 18 question, that none of these five people was a staff 19 employee, for the purpose of my question here, is -- 20 is there any other reason why you would be using the 21 word "purchase" or "sell" other than to distinguish 22 an artist from a staff employee? 23 MR. TOBEROFF: Objection as to form. 24 BY MR. PETROCELLI: 25 Q Let me rephrase it.</p>

<p style="text-align: right;">Page 114</p> <p>1 Q When you say "work with," I don't know --</p> <p>2 you're changing my -- my words a little bit, so I --</p> <p>3 I just don't want us to be miscommunicating here.</p> <p>4 Would -- Larry Lieber was a writer, correct?</p> <p>5 MR. TOBEROFF: Objection as to form.</p> <p>6 THE WITNESS: Larry Lieber was a writer and</p> <p>7 an artist.</p> <p>8 BY MR. PETROCELLI:</p> <p>9 Q Okay. And is it your understanding that</p> <p>10 Stan Lee would give scripts or plots to Larry Lee --</p> <p>11 Lieber, his brother, to then go and write?</p> <p>12 MR. TOBEROFF: Objection as to form, lacks</p> <p>13 foundation.</p> <p>14 THE WITNESS: At times he would do that.</p> <p>15 BY MR. PETROCELLI:</p> <p>16 Q Okay. Did he do it generally, or you're</p> <p>17 saying rarely?</p> <p>18 A During some periods generally and some</p> <p>19 periods rarely.</p> <p>20 Q Now, we're talking about -- we're not --</p> <p>21 A I'm talking about --</p> <p>22 Q -- talking about Rawhide Cowboy [sic], right?</p> <p>23 We're talking about these Marvel superheroes,</p> <p>24 right?</p> <p>25 A I'm talking everything Marvel published.</p>	<p style="text-align: right;">Page 116</p> <p>1 up with the idea bears on the</p> <p>2 question of work for hire?")</p> <p>3 MR. TOBEROFF: Objection as to form, calls</p> <p>4 for legal conclusions from a lay witness.</p> <p>5 THE WITNESS: I have no legal opinion on</p> <p>6 that. "Work for hire" is a legal term.</p> <p>7 BY MR. PETROCELLI:</p> <p>8 Q Well, I didn't ask for a legal opinion, so</p> <p>9 let me try again, okay?</p> <p>10 A All right.</p> <p>11 Q And I'm -- look, the judge is going to decide</p> <p>12 this case --</p> <p>13 A Okay.</p> <p>14 Q -- not you or me, okay?</p> <p>15 You're being put up as an expert witness to</p> <p>16 assist the Court, if the Court needs such</p> <p>17 assistance --</p> <p>18 A Okay.</p> <p>19 Q -- okay?</p> <p>20 Do you believe, in rendering your opinions in</p> <p>21 this case, that who comes up with the idea, with</p> <p>22 respect to these five contributors, somehow bears on</p> <p>23 the work-for-hire question that's the subject of</p> <p>24 this case?</p> <p>25 MR. TOBEROFF: Objection as to form, calls</p>
<p style="text-align: right;">Page 115</p> <p>1 Q Well, I'm talking about specifically Ant-Man,</p> <p>2 Iron Man and Thor.</p> <p>3 A Okay. You haven't speci- --</p> <p>4 Q Would that change your --</p> <p>5 A You haven't specified those before.</p> <p>6 Q Okay. Would that change your answer?</p> <p>7 And again, the question I'm asking is whether</p> <p>8 Lieber generally would get plot lines or story lines</p> <p>9 or -- or some kind of input from Stan before he</p> <p>10 launched off writing a script for Ant-Man, Iron Man</p> <p>11 or Thor.</p> <p>12 MR. TOBEROFF: Objection as to form.</p> <p>13 THE WITNESS: He would get a plot idea from</p> <p>14 his brother. In most of those cases, I don't</p> <p>15 believe the ideas came from Stan, but he would --</p> <p>16 he would -- he would be given something.</p> <p>17 BY MR. PETROCELLI:</p> <p>18 Q Is it your view that who comes up with the</p> <p>19 idea bears on the question of work for hire?</p> <p>20 MR. TOBEROFF: Objection as to form. Again,</p> <p>21 calls for a legal conclusion.</p> <p>22 THE WITNESS: Can I have the question one</p> <p>23 more time, please.</p> <p>24 (Record read as follows:</p> <p>25 "Q: Is it your view that who comes</p>	<p style="text-align: right;">Page 117</p> <p>1 for multiple legal conclusions --</p> <p>2 THE WITNESS: I believe I am not --</p> <p>3 MR. TOBEROFF: -- and asked and answered.</p> <p>4 Go ahead.</p> <p>5 THE WITNESS: I believe I am not a -- not a</p> <p>6 lawyer who is conversant with the -- I do not have</p> <p>7 an opinion in regard to your question as to that</p> <p>8 situation.</p> <p>9 BY MR. PETROCELLI:</p> <p>10 Q And would you give me the same answer with</p> <p>11 respect to the question of ownership?</p> <p>12 So let me rephrase it to you.</p> <p>13 In rendering your opinions in this case, do</p> <p>14 you believe that who comes up with the idea for</p> <p>15 something that's going to be published is pertinent</p> <p>16 to the issue of who owns that work?</p> <p>17 MR. TOBEROFF: Objection as to form --</p> <p>18 THE WITNESS: Is it pertinent?</p> <p>19 MR. TOBEROFF: -- and, again, calls for a</p> <p>20 legal conclusion.</p> <p>21 But you can answer.</p> <p>22 THE WITNESS: I, again, do not have an</p> <p>23 opinion on that.</p> <p>24 By MR. PETROCELLI:</p> <p>25 Q Okay. Is it true that Stan Lee would</p>

<p style="text-align: right;">Page 118</p> <p>1 generally sit down and discuss plots and discuss 2 story lines with artists like Jack Kirby, for 3 example? 4 A I think -- 5 MR. TOBEROFF: Objection as to form. 6 THE WITNESS: I believe he very rarely sat 7 down and discussed with Jack Kirby. 8 BY MR. PETROCELLI: 9 Q Well, I -- I don't -- "sit down" could be 10 literally sit down, or it could mean figuratively 11 sit down. I just want to be clear. 12 Would he -- would he typically discuss plots 13 and discuss story lines with Kirby who would then go 14 off and -- and draw them? 15 MR. TOBEROFF: Asked and answered. 16 THE WITNESS: I believe they did meet on 17 things and talk at times. I listened in on -- 18 Jack's end of one phone conversation with Stan on a 19 story once. 20 BY MR. PETROCELLI: 21 Q So is the answer to my question that they did 22 typically do that? 23 MR. TOBEROFF: Objection. That misstates his 24 testimony. 25 THE WITNESS: I would not say typically.</p>	<p style="text-align: right;">Page 120</p> <p>1 A Well, no. The conversation with Steve Ditko 2 I didn't have to look up, because I knew that it 3 was -- the -- the one time I -- I sat in a room with 4 Mr. Ditko and talked -- I -- I was with him for two 5 days. And that was on a trip that I made in 1970 to 6 New York with my then-partner. 7 We were going -- we attended my very first 8 comic convention, which was the July 4th comic 9 convention of 1970 at the Statler Hilton Hotel 10 and -- so we went back -- we flew back there on the 11 Sunday before and went to DC Comics on Monday. 12 We went to Marvel Comics on Tuesday. We went 13 to Steve Ditko's office on Wednesday. We went back 14 to Marvel on Thursday. 15 I remember that week -- that week very 16 vividly, because I was meeting all these people for 17 the first time, all these -- and I met dozens and 18 dozens of people who over the years have written or 19 drawn my favorite comic books. It was a very 20 memorable week for me -- 21 Q Who -- 22 A -- and that was the only time I ever could 23 have talked to Steve Ditko. 24 Q Who was your partner? 25 A My partner, then, was a gentleman named</p>
<p style="text-align: right;">Page 119</p> <p>1 BY MR. PETROCELLI: 2 Q Take a look at your deposition in the Kirby 3 case on this point. I'll -- I'll show you a couple 4 of pages. 5 A All right. 6 Q Did you read your Kirby deposition in 7 preparing for your testimony today? 8 A No. 9 Q What did you do to prepare? Anything? 10 A I read over documents Mr. Toberoff had 11 supplied to me. I read over my expert reports and 12 Mr. Levitz's expert reports. And -- and I looked up 13 some dates and things on matters that I thought 14 might be relevant. 15 Q What dates were those? 16 A Just -- I'm just trying to guess areas that 17 we might be talking about, and I wanted to make sure 18 that something was within the scope of the dates. I 19 didn't want to tell you an example that was -- find 20 out later it was 1980. 21 Q When you gave me some of those broken promise 22 dates -- 23 A Yeah. 24 Q -- were those some of the dates you looked 25 up?</p>	<p style="text-align: right;">Page 121</p> <p>1 Steve Sherman. 2 Q Is he still living? 3 A No. 4 Q Between 19- -- that was your first time in 5 Marvel, 1970, right? 6 A Correct. 7 Q In the offices of Marvel -- 8 A Yes. 9 Q -- right? 10 And from 1970 to 1975, were there any other 11 occasions that you were in the offices of Marvel -- 12 A I was -- 13 Q -- in New York? 14 A -- in the offices of Marvel in 1973, '75, 15 '76. 16 Q In '73 and '75, on -- for how long were you 17 there? 18 A '73, I was there for two or -- I visited for 19 two or three days, not the entirety of the day, but 20 I went by and hung out, talked to people, chatted 21 with people. 22 Q At Marvel's office? 23 A At Marvel's [sic] office -- Marvel's office. 24 Q You spent two or three days in their offices? 25 A Yes.</p>

<p style="text-align: right;">Page 122</p> <p>1 Q Okay.</p> <p>2 A And then --</p> <p>3 Q And then in '75?</p> <p>4 A In '75, I spent two weeks in New York, and I</p> <p>5 kind of spent half of it at DC and half of it at</p> <p>6 Marvel, sometimes parts of the same day in both</p> <p>7 places.</p> <p>8 Q And what was the reason why in '73 and '75</p> <p>9 you were spending some time in the offices of</p> <p>10 Marvel?</p> <p>11 A I had a lot of friends there. I was</p> <p>12 interested in things. I had -- in '75, they asked</p> <p>13 me to do some -- I don't know what the term would</p> <p>14 be -- help them out with some historical problems</p> <p>15 they had.</p> <p>16 Q Okay.</p> <p>17 A And Sol Brodsky, who was the head of</p> <p>18 production at that time -- I think he had a loftier</p> <p>19 title than that -- asked me to come up and -- and he</p> <p>20 wanted to quiz me on things.</p> <p>21 MR. PETROCELLI: Let me show you your</p> <p>22 deposition in Kirby now, which I'll mark as</p> <p>23 Exhibit 153.</p> <p>24 (Exhibit 153 was marked for identification</p> <p>25 and is attached hereto.)</p>	<p style="text-align: right;">Page 124</p> <p>1 THE WITNESS: I'm -- I'm there.</p> <p>2 Okay. How far should I go on this?</p> <p>3 BY MR. PETROCELLI:</p> <p>4 Q End of 92, beginning of 93.</p> <p>5 A All right. I think I'm ready.</p> <p>6 Q Okay. So this was about Fantastic Four?</p> <p>7 A This is about Fantastic Four #1.</p> <p>8 Q Right.</p> <p>9 A Mostly.</p> <p>10 Q And -- and you agreed with the questioner</p> <p>11 that Jack Kirby and Stan Lee sat down to discuss the</p> <p>12 plot and the story line before Kirby actually began</p> <p>13 to draw the characters, right?</p> <p>14 A Correct.</p> <p>15 MR. TOBEROFF: Objection as to form.</p> <p>16 BY MR. PETROCELLI:</p> <p>17 Q And you further agreed -- well, I'll -- do</p> <p>18 you see line 22, page 92 (as read):</p> <p>19 "Question: And was it your</p> <p>20 understanding, with regard to these</p> <p>21 other characters -- and we can go</p> <p>22 through all of them, or we can -- or</p> <p>23 just we can get a general</p> <p>24 understanding -- that this was</p> <p>25 typically what was done, that Lee</p>
<p style="text-align: right;">Page 123</p> <p>1 THE WITNESS: Boy, I talked a lot.</p> <p>2 BY MR. PETROCELLI:</p> <p>3 Q And I'll direct your attention to page 92</p> <p>4 and -- and 93.</p> <p>5 Want to take a look at that?</p> <p>6 A 92.</p> <p>7 Q And you recall giving a deposition in the</p> <p>8 Kirby case in 2010?</p> <p>9 A Correct.</p> <p>10 Q You see, like, starting at line 13 --</p> <p>11 MR. TOBEROFF: Before we ask the questions,</p> <p>12 would just ask that even though you're directed to a</p> <p>13 particular page, to understand the context of the</p> <p>14 question, you may have to read before that page.</p> <p>15 So I just want to make sure you're not just</p> <p>16 looking at something out of context.</p> <p>17 BY MR. PETROCELLI:</p> <p>18 Q If you want, you can go back to page 91,</p> <p>19 because it turns out that this line of question</p> <p>20 starts after a recess.</p> <p>21 MR. TOBEROFF: Where it says (as read):</p> <p>22 "Videographer: This is the</p> <p>23 beginning of disc" --</p> <p>24 THE WITNESS: Yes. I see that, yes.</p> <p>25 MR. TOBEROFF: Okay.</p>	<p style="text-align: right;">Page 125</p> <p>1 and Kirby would sit down together,</p> <p>2 discuss the plot, discuss the</p> <p>3 storyline, and then Kirby would go</p> <p>4 and draw whatever he was going to</p> <p>5 draw?</p> <p>6 "Answer: Correct."</p> <p>7 And that was truthful testimony you gave?</p> <p>8 A Yes.</p> <p>9 Q Okay. You can put that aside.</p> <p>10 I'll represent to you that Larry Lieber</p> <p>11 testified in this case that he wrote the scripts for</p> <p>12 Iron Man, Thor and Ant-Man all from Stan Lee's</p> <p>13 plots.</p> <p>14 Do you have any reason to dispute that?</p> <p>15 A Yes. Whenever I've talked to Larry about</p> <p>16 that, he has always been very specific to say there</p> <p>17 were plots that Stan gave to him and he did not</p> <p>18 understand the point of origin. He said they may</p> <p>19 have been from plots that Jack Kirby gave to Stan.</p> <p>20 Q Can you take a look at pages 88, 89 and 90 of</p> <p>21 Larry Lieber's deposition transcript, which I'll</p> <p>22 share with you.</p> <p>23 A If someone will hand it to me.</p> <p>24 (Exhibit 154 was marked and withdrawn.)</p> <p>25 MR. TOBEROFF: Thank you.</p>

<p style="text-align: right;">Page 126</p> <p>1 THE VIDEOGRAPHER: I apologize. This is the</p> <p>2 videographer. I've lost connection with the Zoom.</p> <p>3 Could we go off record to reconnect them?</p> <p>4 MR. PETROCELLI: Okay.</p> <p>5 THE VIDEOGRAPHER: The time is 12:16 p.m.</p> <p>6 Off record.</p> <p>7 (Recess.)</p> <p>8 THE VIDEOGRAPHER: The time is 12:22 p.m.</p> <p>9 We're back on record.</p> <p>10 BY MR. PETROCELLI:</p> <p>11 Q You know, I -- I represented to you what</p> <p>12 Larry Lieber has testified, which I can show you. I</p> <p>13 want to make sure I understand your answer.</p> <p>14 You mentioned something about Larry told you</p> <p>15 that Stan wasn't the point of origin. Is that what</p> <p>16 you were saying?</p> <p>17 A He said he wasn't sure.</p> <p>18 Q Okay.</p> <p>19 A He did not know the point -- he --</p> <p>20 Q What do you mean by --</p> <p>21 A Let me -- let me answer.</p> <p>22 Q I want you --</p> <p>23 A Larry said he --</p> <p>24 Q -- to explain what you mean by "point of</p> <p>25 origin."</p>	<p style="text-align: right;">Page 128</p> <p>1 THE WITNESS: I would presume so.</p> <p>2 MR. PETROCELLI: Okay.</p> <p>3 MR. TOBEROFF: Don't presume.</p> <p>4 THE WITNESS: Okay.</p> <p>5 MR. TOBEROFF: Don't speculate.</p> <p>6 THE WITNESS: However, in the case of some of</p> <p>7 these -- if you want a complete answer here -- the</p> <p>8 stories were based on covers. Sometimes the cover</p> <p>9 was done first. And the covers were done by Jack</p> <p>10 Kirby. So the point of origin of the story line,</p> <p>11 particularly if it involved a new character who was</p> <p>12 first seen on that cover, may have started with</p> <p>13 Jack.</p> <p>14 BY MR. PETROCELLI:</p> <p>15 Q Is there some significance why you keep</p> <p>16 pointing out to me that Stan Lee might not have been</p> <p>17 the original thinker of some idea?</p> <p>18 A It's part of the historical record.</p> <p>19 Q Okay.</p> <p>20 A It's -- it's --</p> <p>21 Q Do you see any importance to that piece of</p> <p>22 the historical record to the question of who owns</p> <p>23 these works?</p> <p>24 MR. TOBEROFF: Objection; calls for a legal</p> <p>25 conclusion.</p>
<p style="text-align: right;">Page 127</p> <p>1 A Larry said that he was given plot ideas --</p> <p>2 these -- what we're talking about here is mainly --</p> <p>3 the story is that -- that appeared in the beginning,</p> <p>4 the front part, the cover story, for four comic</p> <p>5 books or five comic books, Tales to Astonish,</p> <p>6 Strange Tales, Tales of Suspense, Journey Into</p> <p>7 Mystery and sometimes Amazing Adventures.</p> <p>8 These are stories that were illustrated by</p> <p>9 Jack Kirby, working from scripts that were sent to</p> <p>10 him by Larry Lieber. Jack maintained that the plots</p> <p>11 usually came from him, he'd give the plots to Stan,</p> <p>12 Stan would give the plots to Larry.</p> <p>13 I asked Larry, the first time I met him,</p> <p>14 which was in that office visit in 1970, "Is that</p> <p>15 true?"</p> <p>16 And he said, "I don't know where the plots</p> <p>17 came from. They may have come from Jack."</p> <p>18 Q To be clear, though, Lieber got the</p> <p>19 information from Stan Lee for the plots and the</p> <p>20 story line?</p> <p>21 A Correct.</p> <p>22 Q Okay. And the same would be true for</p> <p>23 Iron Man, Thor and Ant-Man stories, right?</p> <p>24 A I would --</p> <p>25 MR. TOBEROFF: Objection as to form.</p>	<p style="text-align: right;">Page 129</p> <p>1 THE WITNESS: I am talking as a historian,</p> <p>2 not as a lawyer here.</p> <p>3 BY MR. PETROCELLI:</p> <p>4 Q Okay. So in rendering -- rendering opinions</p> <p>5 in this case, you're not assigning any significance,</p> <p>6 then, to who came up with a particular idea, in</p> <p>7 terms of who owns the results at issue here -- the</p> <p>8 works at issue here? Excuse me.</p> <p>9 MR. TOBEROFF: Objection as to form,</p> <p>10 misstates testimony.</p> <p>11 MR. PETROCELLI: Can you repeat my question?</p> <p>12 THE WITNESS: I am not assigning any</p> <p>13 significance to who came up with the ideas as it</p> <p>14 relates to -- you know, I assume that that's a</p> <p>15 separate issue. The -- the ownership of it has to</p> <p>16 do with contracts and checks, payments and money and</p> <p>17 things like that, not with -- Jake Kirby came up</p> <p>18 with the idea for lots of comic books he never</p> <p>19 claimed ownership of, in other places.</p> <p>20 BY MR. PETROCELLI:</p> <p>21 Q You agree that people at Marvel, like Stan</p> <p>22 Lee or Roy Thomas or others who might be involved in</p> <p>23 editing a comic book, had the ability to take a work</p> <p>24 created by one of these contributors and make</p> <p>25 changes to it, correct?</p>

<p style="text-align: right;">Page 154</p> <p>1 more time, please.</p> <p>2 (Record read as follows:</p> <p>3 "Q: Is it true that it was an</p> <p>4 inconsistent policy, that some</p> <p>5 checks had occasionally things</p> <p>6 stamped on them and others, people</p> <p>7 crossed them out, and that there was</p> <p>8 no particular firm policy?")</p> <p>9 MR. TOBEROFF: Same objection as to form,</p> <p>10 calls for speculation.</p> <p>11 THE WITNESS: I believe that is true.</p> <p>12 BY MR. PETROCELLI:</p> <p>13 Q With respect to your -- your report, you</p> <p>14 state that (as read):</p> <p>15 "Comic book publishers did not see</p> <p>16 any lasting value in their product</p> <p>17 beyond monthly sales figures."</p> <p>18 What's the basis of that statement?</p> <p>19 A Talking to people throughout the -- the comic</p> <p>20 book industry for much of my life, hearing people</p> <p>21 say this stuff is going to be worthless someday. I</p> <p>22 mean, it's -- if you want me to give you -- do you</p> <p>23 want me to give you specific examples?</p> <p>24 Q Well, to be clear, Marvin [sic] Goodman never</p> <p>25 told you this, right?</p>	<p style="text-align: right;">Page 156</p> <p>1 statements in your report, right?</p> <p>2 A I believe I'm talking, in that particular</p> <p>3 thing, about early in the -- early in the period.</p> <p>4 Because by the time -- the -- the Batman TV show</p> <p>5 went on in 1966. That changed the industry a lot,</p> <p>6 because people woke up and suddenly decided that</p> <p>7 characters could be on TV, and they could be on</p> <p>8 T-shirts and such.</p> <p>9 Q And that was 1966, you said?</p> <p>10 A '66, I believe, yes.</p> <p>11 Q Did anybody at Marvel tell you that there was</p> <p>12 no expectation that it would ever be reprinted and</p> <p>13 little thought that the characters would be</p> <p>14 merchandised or exploited in the media?</p> <p>15 A In -- in the mid-'70s, Sol Brodsky told me</p> <p>16 that that was the attitude when the Marvel superhero</p> <p>17 books first started in '62 -- '61, actually.</p> <p>18 Q And is that written down someplace?</p> <p>19 A I don't know.</p> <p>20 Q You say in your report that freelance -- that</p> <p>21 the Marvel method was used by freelance artists to</p> <p>22 plot and draw comic book stories to reduce costs.</p> <p>23 MR. TOBEROFF: What's the question?</p> <p>24 BY MR. PETROCELLI:</p> <p>25 Q Who told you that?</p>
<p style="text-align: right;">Page 155</p> <p>1 A No. Martin Goodman.</p> <p>2 Q Excuse me, Martin Goodman, correct.</p> <p>3 A No.</p> <p>4 Q Okay.</p> <p>5 A No.</p> <p>6 Q Nobody at Marvel ever told you this, right?</p> <p>7 A Stan Lee told me that.</p> <p>8 Q He told you this, "Comic book publishers did</p> <p>9 not see any lasting value in their product beyond</p> <p>10 monthly sales figures"?</p> <p>11 A Not -- no, not beyond monthly sale figures.</p> <p>12 He just, at times, told me that he thought that the</p> <p>13 business was going to crumble one of these days soon</p> <p>14 and -- and none of this stuff would be remembered.</p> <p>15 Q Is that written down in some of your</p> <p>16 publications?</p> <p>17 A I don't recall.</p> <p>18 Q You also said there were no -- (as read):</p> <p>19 "There was no expectation that it</p> <p>20 would ever be reprinted and little</p> <p>21 thought that the characters would be</p> <p>22 merchandised or exploited in other</p> <p>23 media."</p> <p>24 And, again, you're talking about the relevant</p> <p>25 time period here, right, '62 to '75, in making these</p>	<p style="text-align: right;">Page 157</p> <p>1 A Jack --</p> <p>2 MR. TOBEROFF: Object- --</p> <p>3 THE WITNESS: I'm sorry.</p> <p>4 MR. TOBEROFF: Objection as to form.</p> <p>5 BY MR. PETROCELLI:</p> <p>6 Q Jack Kirby?</p> <p>7 A Jack Kirby, Steve Ditko, Don -- I mean, it</p> <p>8 was kind of an assumption.</p> <p>9 Q Well, I'm not asking you about an assumption.</p> <p>10 A No, but, I mean, the Marvel method saddled</p> <p>11 the artist with doing many things, many -- many</p> <p>12 parts of the process, which at DC Comics would -- a</p> <p>13 writer would be paid for.</p> <p>14 Q I'm just asking whether someone, a person at</p> <p>15 Marvel, actually told you that the purpose of the</p> <p>16 Marvel method was to reduce costs. I'm not asking</p> <p>17 for your interpretation of it.</p> <p>18 MR. TOBEROFF: Objection as to form.</p> <p>19 BY MR. PETROCELLI:</p> <p>20 Q Did you understand my question?</p> <p>21 A Yeah. I think I -- I think I understand your</p> <p>22 question.</p> <p>23 Q And did someone say, oh, we're doing the</p> <p>24 Marvel method in order to reduce costs?</p> <p>25 MR. TOBEROFF: Objection as to form.</p>

[illegible]